

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9500 OF 2014

M/s.Arun Enterprises

Prop: Arun Sadashiv Malusare

...Petitioner

V/s.

Dattatray Maharaj Kalambe Jaoli

Sahakari Bank Ltd. & Ors.

...Respondents

Mr.Prashant P. Kulkarni for the Petitioner.

Mr.Pradeep S. Gole for Respondent No.1.

CORAM : M.S. SONAK, J.

DATE : 10th OCTOBER 2016.

P.C.

1. Heard the learned counsel for the parties.

2. Mr.Prashant P. Kulkarni the learned counsel for the Petitioner submits that the property, with regard to which the injunction has been issued in the impugned order, belonged to the petitioner's wife and the same, was never mortgaged to the Bank. He submits that the amount claimed as due by the Bank is hardly Rs.6,22,000/- and there are records which establish that even this amount, has in fact been paid by the petitioner to the Bank. He submits that the petitioner, without prejudice, has offered another

Flat at Vashi as security to the Bank. In these circumstances, he submits that the impugned order be vacated or in any case, leave be granted to the petitioner to substitute security, so that, there is no restraint in the matter of dealing with the property in question.

3. Mr.Pradeep Gole the learned counsel for the respondent-Bank submits that two Courts, upon due consideration of the material on record have accepted the position that the suit property is indeed mortgaged to the Bank. In such circumstances, he submits, that there is no reason to interfere with the impugned order.

4. The challenge in this petition is to the order dated 18th July 2014 made by the Appeal Court confirming the order dated 20th January 2014 made by the Co-operative Court granting temporary injunction restraining the petitioner from transferring, alienating or creating third party rights in the suit property. The two Courts, therefore, upon due consideration of material on record have recorded prime-facie conclusion that the suit property is indeed mortgaged in favour of the Bank and the petitioner ought not to be permitted to deal with the same during the pendency of the proceedings. There is no perversity in the record of prima-facie

findings. The issue as to whether the property belonged to the wife of the Petitioner, is a matter which will ultimately, have to be decided upon trial.

5. Further, the impugned order, is quite balanced in the sense that restraint has been imposed upon the petitioner in dealing with the suit property. The petitioner is not injuncted from continuing in possession of the suit property or enjoying the suit property.

6. In dealing with the appeals against interlocutory orders the Hon'ble Supreme Court in the case of ***Wander Ltd. & Anr. V/s. Anotx India P.Ltd.***¹ has observed thus :

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“....is to protect the plaintiff against

1 1990 (Supp) SCC 727

injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except

where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. V. Potha Joseph* (SCR 721)

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this

principle. "

7. In this case the appeal against the interlocutory order has already been dismissed by the Appeal Court. The scope of interference in Writ Jurisdiction, against the appeal order, is even more limited. This is not a case whether the two Courts can be said to have erred on principle or that discretion has been exercised arbitrarily or unreasonably.

8. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)